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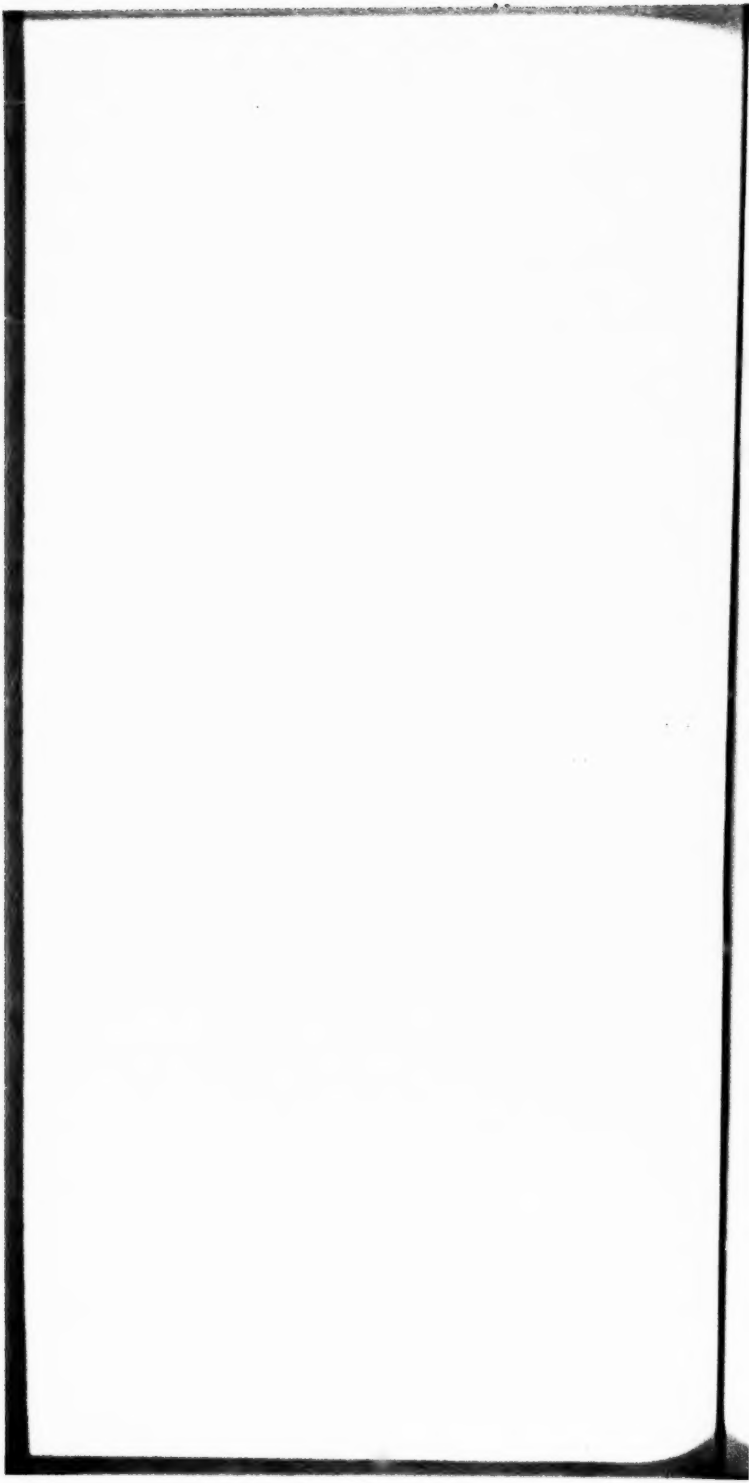

IN THE SUPREME COURT OF THE
UNITED STATES OF AMERICA

JEROME DALY, GORDON C. PETERSON, WILLIAM E. DREXLER, CHARLES T. THIBODEAU, PETITIONERS,

VS.

JOHN McCARTHY, CLERK OF SUPREME COURT OF MINNESOTA, OSCAR R. KNUTSON, CHIEF JUSTICE, SUPREME COURT OF MINNESOTA, FALLON KELLEY, C. DONALD PETERSON, JAMES C. OTIS, JOHN TODD, WALTER ROGOSHESKI, MARTIN A. NELSON, WILLIAM P. MURPHY, HARRY H. MacLAUGHLIN, ASSOCIATE JUSTICES OF THE SUPREME COURT OF MINNESOTA, ROBERT BAKKE, DISTRICT JUDGE SITTING PURSUANT TO APPOINTMENT OF THE COURT, WARREN R. SPANNAUS, ATTORNEY GENERAL OF MINNESOTA, ARLEN I. ERDAHL, SCE. OF STATE OF MINNESOTA, LOU McKENNA, RAMSEY COUNTY MINNESOTA AUDITOR, GEORGE B. HICKEY, HENNEPIN COUNTY AUDITOR, MINNESOTA, SIDNEY P. ABRAHAMSON, RAMSEY COUNTY DISTRICT JUDGE, A.PAUL LOMMEN, HENNEPIN COUNTY DISTRICT JUDGE, RESPONDENTS,

PETITION FOR WRIT OF CERTORARI FROM THE SUPREME COURT OF THE UNITED STATES TO THE RESPONDENTS ABOVE NAMED:

TO: The Honorable, The Chief Justice and Associate Justices of The Supreme Court of the United States of America: Come now the above named Petitioners and respectfully represent and show the Supreme Court of The United States as follows:

I.

That your Petitioners are residents and citizens of the State of Minnesota and of the United States:

COPY PRINTED CLOSE TO EDGE

II.

That Respondents above named are public officials of the State of Minnesota and hold office and positions as such as is above indicated in the caption.

III.

That this is an Appeal from a final Order of The Supreme Court of Minnesota entered in an Election matter on September 8, 1972 In re Candidacy of Jerome Daly and Gordon C. Peterson for Associate Justice of the Supreme Court, and the Candidacy of of William E. Drexler and Charles Thibodeau for Judge of District Court. That said final Order, which has the effect of a final Judgment is attached hereto as Appendix "A".

IV.

That the Supreme Court of The United States has Jurisdiction of this matter under authority of the Constitution of The United States and Title 28 U.S.Code Sec. 1257 and more particularly Articles 3, 6, Amendments 1, 4, 5, 9, and 14 of The Constitution of The United States.

V.

That Article 6 Sec. 7 of the Minnesota Constitution provides as follows:

"Judges of the Supreme Court, the District Court and Probate Court shall be learned in the law".

VI.

That on July 14, 1972 Jerome Daly filed for the office of Associate Justice of The Supreme Court of Minnesota for the seat held by C. Donald Peterson and Gordon C. Peterson filed for office of Associate Justice of The Supreme Court of Minnesota for the seat held by Associate Justice Fallon Kelley.

On July 14, 1972, William E. Drexler, Justice of the Peace for the City of St. Paul filed for the seat held by Ramsey County District Court Judge Sidney P. Abrahamson.

On July 18, 1972, Charles T. Thibodeau filed for the seat held by Hennepin County District Court Judge A. Paul Lommen. All four Petitioners filed a qualifing affidavit with the various secretary of State and County Auditors stating that they were learned in the law.

VII.

Thereafter, respondents were served with an Order to Show Cause, over the signature of Oscar K. Knutson, Chief Justice of the Supreme Court of Minnesota, not issued under the seal of the Court and not signed by the Clerk of the Supreme Court. The Order To Show Cause set the matter for hearing on August 22, 1972. It and the attached affidavits are attached hereto as Appendex "B"

VIII.

Respondents appeared specially and filed a Motion to dismiss, a copy of which is attached hereto and made a part hereof an marked Appendix "C".

IX.

Respondents filed a brief with the Supreme Court of Minnesota which is attached hereto and made a part hereof as Appendix "D".

That Petitioner Gordon C. Peterson practiced as a licensed Lawyer in Minnesota from April 29, 1942 until June 23, 1961.

Petitioner Jerome Daly practiced law as a licensed Lawyer in Minnesota from May 14, 1953 until July 16, 1971.

Petitioner William Drexler practiced law as a licensed Lawyer from October 13, 1961 until June 18, 1971.

Charles Thibodeau was never licensed to practice law in Minnesota, but has acquired a knowledge of the law by study and Court appearances.

William E. Drexler had been elected by the people of Minnesota as a Justice of the Peace at the time he was disbarred and stood for re-election in the spring of 1972. In a field of 8 candidates,where two were to be elected, he easily won re-election in St.Paul where he had resided all of his life.

X.

The provision of the Minnesota Statutes, 203.38, under which the Minnesota Supreme Court proceeded against Petitioners, in a proceeding without parties, is as follows:

XI.

The questions presented for review are as follows:

1. Is MSA 203.38, which provides for proceedings without Notice, parties, hearings, Court, Judgment or review, constitutional and permitted by the 14th Amendment?

2. Is Article 6 Sec. 7 of the Minnesota Constitution requireing qualifications for Judicial Office repugnant to the 14th Amendment's due process, equal protection of the laws and privilege and immunities clause?

3. Are the requirements set forth in the opinion of the Supreme Court of Minnesota, along with the Canons of Ethics and Disciplinary Rules of the American Bar Association Adopted by Order of the Supreme Court of Minnesota, repugnant to Amendments

1, 4, 5, 9 and 14 to the Constitution of the United States and the Bill of Rights of the Minnesota Constitution, including the Common Law?

4. Can the Chief Justice sit in the face of an affidavit of Prejudice filed by Petitioner William E. Drexler?

5. Is not the entire Supreme Court of Minnesota disqualified because of self interest because the decision directly affects all of them?

6. Can the Supreme Court of Minnesota proceed upon its own Motion and without due process of Law?

7. Can the Supreme Court of Minnesota proceed in violation of MSA 408.04 which is as follows:

8. Can the Supreme Court of Minnesota interfere with the rights of conscience by enacting Canons of Ethics by Court Order and then make compliance of these Canons of Ethics one of the requirements of holding Judicial Office?

9. Can the Supreme Court of Minnesota set up a Religious Test as a qualification for public Office?

10. Can a State deny to its Citizens the equal protection of the Laws?

XII.

For Argument see the brief that was filed with the Supreme Court of Minnesota as Appendix "D" and found on pages 39 & 49 in this Petition.

CONCLUSION

Under the guise of regulating the legal profession the Supreme Court has enacted Canons of Ethics by Court Order which not only interfere with the rights of con-

science but constitute a long step toward the establishment of Religion by the State of Minnesota. Not only that but they interfere with the rights of freedom of association, conscience, Counsel, self incrimination, the rights of the people to be secure in their house, persons, papers and effects, freedom of Petition and assembly. The state cannot interfere with the right of a candidate to run for public office without showing a compelling governmental interest and certainly they cannot interfere with the right of the people to decide this question at the ballot box and elect Judicial candidates of their choice and with such learning of the law as they, the people, deem fit.

Not only are the rights of the Petitioner's as candidates involved, but the rights of the people of the State of Minnesota are more importantly involved. The rights of the People are being thwarted by the actions of the closed monopoly of licensed Lawyers and Judges in Minnesota.

Wherefore, Your Petitioners pray that a Writ of Certiorari be issued by this Court directed to the respondents to certify to the Supreme Court the complete record in the Supreme Court of Minnesota in file No. 43856 and that the Supreme Court summarily reverse the Order of the Supreme Court of Minnesota of September 8, 1972, and to direct Respondents to cause the names of Petitioners to be placed upon the ballot in the general election to be held on November 7, 1972, and for such other relief as may be authorized by law.

Respectfully submitted,

William E. Drexler

Jerome Daly

Gordon C. Peterson

Charles T. Thibodeau

VERIFICATION

STATE OF MINNESOTA
SS
COUNTY OF HENNEPIN

William E. Drexler, Jerome Daly, Gordon C. Peterson, Charles T. Thibodeau, having been first duly sworn depose and state that they have read and subscribed to the foregoing Petition for Certiorari and that the same is true.

William E. Drexler

Jerome Daly

Gordon C. Peterson

Charles T. Thibodeau

Subscribed and sworn to before me this October 3, 1972.

Notary Public

DONNA J. THIBODEAU
Notary Public, Hennepin County, Minn.
My Commission Expires Feb. 25, 1978.

Appendix A

No. 222 Supreme Court Per Curiam
Took no part,
Peterson, J.,
Kelly, J.

In re Candidacy of
Jerome Daly and
Gordon C. Peterson
for Associate Justice
of the Supreme Court,
and the Candidacy of
William E. Drexler
and Charles Thibodeau
for Judge of District
Court.

Endorsed
Filed Sept8,1972
John McCarthy,
Clerk Minnesota
Supreme Court

43867

Heard and considered en banc.

O P I N I O N

PER CURIAM.

This is a proceeding under Minn.St. 203.38, subd.1, to determine the eligibility of four individuals to have their names appear on the ballots for the general election to be held November 7, 1972, as candidates for justice of the Supreme Court or Judge of the District Court.

Jerome Daly was admitted to practice law in this state on May 14, 1953. He was disbarred by Order of this Court on July 16, 1971. William Edward Drexler was admitted to practice law in this state on October 13, 1961. He was disbarred by Order of this Court on June 18, 1971. Gordon Clinton Peterson, also known as Gordon C. Peterson, was admitted to practice law in this state on April 29, 1942. He was disbarred by Order of this Court on June 23, 1961. Charles Thibodeau has never been admitted to practice law in this state.

On July 14, 1972, Jerome Daly filed an affidavit with the secretary of state as a candidate for the office of associate justice of the supreme court held by C. Donald Peterson; on the same date, Gordon C. Peterson filed an affidavit with the s secretary of state as a candidate for the office of Associate Justice of the Supreme Court held by Fallon Kelly; William E. Drexler filed his affidavit with the County Auditor of Ramsey County as a candidate for the office of Judge of the District Court held by Sidney P. Abrahamson; and Charles Thibodeau filed his affidavit with the County Auditor of Hennepin County for the office of Judge of the District Court, Family Court Division, held by A. Paul Lommen. Each paid the filing fee required by Minn. St. 202.05.

Based upon the affidavits of Arlen I. Erdahl, Secretary of State of the State of Minnesota, Lou McKenna, County Auditor of Ramsey County, and George B. Hickey, County Auditor of Hennepin County, questioning whether the above named individuals, or any of them, are eligible to file for or to hold the office for which they seek to have their names on the ballots in the November 1972 general election, we issued our Order to Show Cause pursuant to # 203.38, subd. 1, why the Secretary of State and the respective County Auditors should not be commanded to refrain from placing the named of either or any of these prospective candidates on the ballots for the general election to be held November 7, 1972.

The proceeding is brought here as an original proceeding under # 203.38, subd. 1, which reads:

"When it shall appear by affidavit to any judge of the supreme court in the case of a state election, or of the district court of the proper county in the case of a county election:

"(a) That an error or omission in the placing or printing of the name*** of any candidate on official primary or general election ballots has occurred or is about to occur; or

"(b) That any other error in preparing or printing the ballots has occurred or is about to occur;***

that the judge immediately shall order the officer, person, or board charged with the error, wrong, neglect, or failure to correct the same or perform the duty forthwith or show why he should not do so."

Section 203.38, subd. 1, was designed to provide an expeditious procedure for legal determination of the proper preparation of ballots to be used at a primary or general election. The need for such procedure has long been recognized. In State ex rel. Olson v. Scott, 105 Minn. 513, 117 N.W.845, 1044 (1908), which involved a proceeding under the forerunner of our present statute to prevent the county auditor of Hennepin County from placing the name of a potential candidate for the legislature on the ballot, we discussed the nature of this statute (1 (105 Minn. 516, 117 N.W. 1045):

"***The public interest requires that there should be some speedy method of determining whether candidates for public office are legally entitled to have their names placed on the official ballot, and section 202 [R.L. 1905] is intended to accomplish that purpose."

Even under this statute, proceedings are sometimes commenced too late to enable the court to act. Such was the case of Marsh v. Holm, 238 Minn. 25,55N.W. 2d 302 (1952). Moe v. Alsop, 288 Minn.323, 180 N.W. 2d 255 (1970), involved the el-

igibility of a candidate for the legislature. There were fact issues involved, so it was necessary to appoint a referee to take and report evidence. While we discussed the limited time afforded the court to decide questions involved, we were in that case able to dispose of them due to the expeditious manner in which the referee acted

A review of our cases brought under this statute discloses a variety of questions that have been raised relating to proper preparation of ballots. Clearly, eligibility to hold the office which an individual seeks is one of the questions properly falling within the purview of the statute.

While a proceeding under this statute is directed against the official whose responsibility it is to prepare the ballots, the order to show cause in this case was also served on those whose eligibility was questioned in order that they might appear and be heard.[1]

---

[1] Peterson, Drexler, and Thibodeau were served personally. Service was made upon Daly by mail due to the fact that personal service could not be accomplished, but he has stated orally in court that he raises no issue as to the manner of service and agrees that he has been served.

They have been given full opportunity to file briefs and to present their views orally. Daly, Peterson, and Thibodeau did appear and argue orally. Drexler did not appear but has joined in the briefs filed and filed a memorandum of his own. They argue for the most part that # 203.38, subd. 1, is unconstitutional in that it violates due process. We do not agree. In a summary proceeding of this kind,

which requires a speedy determination if it is to accomplish its purpose at all, it is difficult to see what more could have been done to afford everyone involved a fair opportunity to be heard.

The qualifications of judges of the supreme court and judges of the district court are found in Minn. Const. art.6 , # 7, which, so far as material, provides:

> "Judges of the supreme court, the district court, and the probate court shall be learned in the law. The qualifications of all other judges and judicial officers shall be prescribed by law." (Italics supplied).

The case of State ex rel. Jack v. Schmahl, 125 Minn. 533, 147 N.W. 425 (1914), involved an attempt by a person not an attorney at law to file for the nonpartisan primary election for the office of judge of the district court. In holding that such person was ineligible under the constitutional provision quoted above, we said (125 Minn.534, 147 N.W. 426):

> "***Our Constitution (article 6, # 6)[2] provides:
>
> "'The judges of the supreme and district courts shall be men learned in the law.'
>
> "Beyond question the framers of the Constitution used the last five words quoted in the sense of attorneys at law, and this view has since been uniformly accepted. The few authorities on the subject are to the same effect. See Jamieson v. Wiggin, 12 S.D. 16 [80 N.W. 137 (1899)]; Freiler v.Schuykill County, 46 Pa. Superior Ct. 58 [1911). The matter does not merit further discussion."

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2 The pertinent provision prior to the amendment of the Constitution in 1956 was found in art. 6, # 6; it now appears in art. 6, # 7.

That definition was followed in State ex rel. Froehlich v. Ries, 168 Minn. 11, 209 N.W. (1926), and State ex rel. Boedigheimer v. Welter, 208 Minn.338, 293 N.W. 914 (1940). It is controlling as to Charles Thibodeau.

In our constitutional convention debates, an attempt was made to eliminate the qualification that members of the supreme court and the district court be learned in the law. In the report of F. H. Smith of the debates before the Democratic group, Minnesota Constitutional Debates, 1857, p. 513, we find the following:

> "Mr.BROWN. I move to strike out in the first line of the following Section [the predecessor to art. 6, # 7] the words 'shall be men learned in the law and':
>
> ***
>
> "If you are going to give the election of Judges to the people, I do not see why you should trammel the people by specifying what sort of men they are to select for Judges. They certainly should have the right to select such men as they see fit, whether learned in the law or not.
>
> Mr.FLANDRAU.***I suppose the meaning of the term which the gentleman proposes to strike out is that the candidate shall be a Counsellor or Attorney at Law. If he has been

admitted to the bar, that is all which will be required.

Mr.EMMETT. That is the legal construction of the term.

"The amendment was not agreed to."

Prior to the amendment to the Constitution in 1956, the term "learned in the law" applied only to members of the supreme court and the district court. That amendment added members of the probate court. At that time there were a number of judges of the probate court who were laymen. They were permitted to remain in office under a schedule appended to Minn. Const., art 6, which, so far as relevant, provides:

"(b) All probate judges in office at the time this Article takes effect shall be deemed learned in the law for the purpose of continuance in, and reelection to, any judicial office inferior to the district court."

In an article by Charles B. Howard, who was chairman of the state bar association committe on constitutional revision, we find the following:

"The Supreme Court, district court and probate court judges are required to be learned in the law and the legislature is authorized to set up qualifications for other judicial officers. In the opinion of the sponsors, it is no longer necessary to use untrained people to sit as judges. It is believed that under the general power granted to the legislature to create courts, it will be possible to set up a court system where a sufficient number of qualified persons will be available to decide legal controversies." Howard,

"Proposed Amendment to Article VI of the Constitution Providing for Exercise of Judicial Power of the State," 13 Bench and Bar of Minn., Mar. 1956, p.13, 15.

In State ex rel. Jack v. Schmahl, supra, we cited with approval Jamieson v. Wiggin, 12 S.D. 16, 80 N.W. 137, 46 L.R.A. 317, 76 A.S.R. 585 (1899), and Freiler V. Schuylkill County, 46 Pa. Super.58 (1911). In Freiler, the Pennsylvania Superior Court, citing Jamieson with approval, stated (46 Pa. Super 62):

"It has been held that the term 'learned in the law' means that the person is 'either admitted or entitled without examination to practice as an attorney at law in the state. The term 'learned in the law' clearly indicates an intention to prescribe some sort of an educational qualification, and should be given some practical effect; and therefore no one is eligible as a judge who is not, when elected, either admitted or entitled to be admitted, without examination, to practice as an attorney at law. To be learned in the law means that the person must have been ascertained by a competent tribunal prior to his election or appointment."***

As far as our research discloses, only two states have held otherwise. Little v. State ex rel. Parsell, 75 Tex. 616, 12 S.W. 965 (1890); Ex parte Craig, 160 Tex.Cr.R. 598, 609, 193 S.W. 2d 178, 185 (1946), reversed on other grounds sub nom. Craig v. Harney, 331 U.S. 367, 67 S.Ct. 1249, 91 L. ed. 1546 (1947); and Heard v. Moore, 154 Tenn.566, 290 S.W. 15, 50 A.L.R.1152 (1926); Potter v. Robbins, 155 Tenn.1, 290 S.W. 396 (1926). See. Annotation, 50 A.L.R. 1156.

The statutes in Tennessee now provide that "[i]n addition to the qualifications provided for judges by article 6, ## 3 and 4 of the Constitution of Tenessse, judges of the Supreme Court, Court of Appeals, chancery courts, circuit courts, and criminal courts, and courts exercising the jurisdiction imposed in one or more of the last three (3) named courts, shall be learned in the law, which must be evidenced by said judge being authorized to practice law in the courts of Tenessee." Tenn. Code Ann. # 17 119. The constitutionality of this statute was upheld in LaFever v. Ware, 365 S.W. 2d 44 (Tenn. 1963)[3]

---

[3] See, Note, 30 Tenn. L. Rev. 640; Overton, The Judicial System in Tennessee and Potentialities for Reorganization, 32 Tenn. L. Rev. 501, 514.

---

so that at the present time the former opinions in Tenessee can no longer be considered autority for the proposition that a constitutional provision providing that candidates for judicial position must be learned in the law need not be admitted to practice law.

Both Texas cases involved the qualifications of a county judge. Texas Constitution, art. 5, # 15, prescribes the legal qualifications of a county judge as one "well informed in the law of the State." In Little v. State ex rel. Parsell, supra, the court discussed the nature of the position of county judge and explained the reasons why the constitution did not require such judges to be lawyers. It stated that more than half of such judges in the state elected since the constitution had been adopted had never studied any law.

The same was formerly true of our probate j judges, but now they must be lawyers, with the exception of those protected when our constitution was amended. The Texas court in Little recognized the constitutional requirements as to qualifications for judges of higher courts, saying (75 Tex. 620, 12 S.W. 967):

> "***It is apparent that county judges were not required to be lawyers, because that qualification is expressly provided by the Constitution for judges of the higher courts."

Again, in Ex parte Craig, supra, the Texas court held that a county judge was not required to be one licensed to practice law in the state under the terms of its constitution quoted above.

It is apparent that these Texas decisions are not authority for the proposition that under our constitutional provision a person learned in the law need not be one who is admitted to practice. As a matter of fact, analysis of the cases mentioned above leads us to conclude that there is no authority so holding.

Other cases following the Minnesota and South Dakota decisions are State ex rel. Chaves v. Evan, 79 N.M. 578, 446 P. 2d 445, 39 A.L.R. 3d 290 (1968); Opinion of the Justices, 181 So. 2d 105 (Ala.1965); Howard v. Burns, 14 S.D. 383, 85 N.W. 920 (1901).

The next question involved in this case is whether a person once admitted to practice law and later disbarred is "learned in the law." Here again there is little authority that is of much help. The case of Danforth v. Egan, 23 S.D. 43, 119 N.W.

1021 (1909), dealt with the qualification for the office of state's attorney, who is required to be learned in the law. Appellant Egan had won election to the office in November 1908 but had been disbarred on October 10, 1908. The South Dakota court held he was not qualified to held the office. While the bulk of the opinion deals with appellant's inability to discharge the duties of the office because he was not qualified to appear in court and with the effect to be given the word "attorney" in the title of the office, the court did conclude that Mr. Egan was disqualified because he was not "learned in the law" unless he was licensed as an attorney when he sought to qualify for the office. Although the South Dakota's court's discussion of the term "learned in the law" as applied to our case might be considered dicta, it is a well-reasoned opinion. The court among other things said (23S.D.53,119 N.W. 1025):

> "***To be learned in the law one certainly must be learned in all those branches of the law which have at all times been recognized as essential in order to qualify one to practice as an attorney, and to be admitted as such. He must not only be versed in the books of law, such as those on contracts, torts, evidence, domestic relation, etc., but it is even more important that he be well based upon those rules of conduct which as a lawyer and practitioner should control his relations wtih his fellow lawvers, his clients, witnesses, and jurors in court, and the public in general. Knowledge of this branch of the law, commonly known as 'legal ethics,' has long been recognized as the most important qualification for one who is to be entrusted with the sacred duties of an attorney at law, and our present statute recognizes this fact, and makes legal ethics one of

> the branches to be considered in passing upon the qualification of one seeking admission to practice."

After discussing Jamieson v. Biggin, supra, the court in Danforth concluded with these remarks (23 S.D. 54, 119 N.W. 1025):

> "***In this case [Jamieson] this court, through Haney, J., say that be the use of this term [learned in the law] the framers of the Constitution held that the class who could hold the office of county judge was confined to persons who, when elected, were either admitted, or entitled to admission, without examination to practice as an attorney at law in this state. This interpretation of these words would exclude appellant from the list of those 'learned in the law' in this state, as he is neither admitted, nor entitled to admission, to practice law; in fact he is expressly forbidden to practice."

The general rule is found in 7 Am. Jur. 2d, Attorneys at Law, # 19, which reads:

> "A Disbarred attorney can appear in court only under circumstances entitling a layman to appear. His status is the same as that of one who has never been admitted to practice. A like rule applies, during the period of suspension, to one who has been suspended."

In 7 C.J.S., Attorney and Clien, # 40, we find much the same statement in the following language:

> "***Generally, as regards the effect of disbarment the aughorities are uniform that it deprives the party disbarred of every privilege to which his license had entitled him***."

In In re Integration of the Bar, 5 Wis. 2d 618, 626, 93 N.W. 2d 601, 605 (1958), we find the following statement:

> "***When a member of the bar is suspended or disbarred it is from the practice of law, not only from appearing in court."

The case of State ex rel. Willis v. M Monfort, 93 Wash. 4, 159 P. 889, L.R.A. 1917B, 801 (1916), dealt with the right to hold the office of superior court judge by a person who had been admitted to practice law but had been suspended for one year. The Washington constitution contained the following provision with respect to eligibility of judges:

> "No person shall be eligible to the office of judge of the supreme court, or judge of a superior court, unless he shall have been admitted to practice in the courts of record of this state, or of the Territory of Washington." Wash. Const., art. 4, # 17.

It was contended that a person who had been admitted to practice was eligible to hold the judicial office even though he had been suspended. In rejecting this contention, the Washington court said (93 Wash. ___, 159, P. 890):

> "***We think it is clear that the Constitution meant to say that no person is eligible to the office of judge of the superior court unless he shall have been admitted to practice in the courts of record in this state, which means that he not only shall have been, but that he is, at the time he becomes a candidate or is required to qualify as such judge, entitled to practice in the courts of this state."

There are also other cases which, though not directly in point, lend support to this reasoning. In State ex rel. Andersov v. Stice, 186 Kan. 69, 348 P.2d 833, certiorari denied, 364 U.S. 823, 81 S.Ct. 59, 5 L.ed.2d 52 (1960), the defendant, Stice, was disbarred while serving as an elected judge. A Kansas statute required that a "judge shall at the time of election be a qualified voter ***and admitted to practice law before the supreme court of Kansas, and shall have been a practicing attorney for a period of at le[illegible] least five (50) years prior to said election or appointment." Kansas Stat. Ann. # 20-2001. Stice had met all the requirements of this statute at the time of his election, but the court held that his subsequent disbarment was ground for removal, saying (186 Kan. 73, 348 P. 2d 836):

> "***The only reasonable conclusion is that every attorney who becomes a judge should continue to possess the right to practice law before the supreme court of Kansas to entitle and qualify him to hold, and to continue in such judicial position."

The same result was reached in State ex rel. Fugina v. Pierce, 191 Wis. 1, 209 N.W. 693 (1926). The Wisconsin court said that the requirement that the judge be an attorney admitted and qualified to practice before a court of record "is a continuing one; that is, it must subsist during the entire term of office." 191 Wis. 3, 209 Wis. 693.

It thus seems clear that a disbarred attorney is no more qualified to hold the office of justice of the supreme court or judge of the district court than any other lay person. By his disbarment he is reduced to the statue of a layman. The term "learned in the law", which prescribed the

qualifications for these judicial positions, clearly prevents a layman from filing for or holding the office; and it must therefore follow that a disbarred attorney is in no better position to file for the office, or to hold it if he is elected, than any other layman.

It is therefore ordered that the secretary of state and the county auditors of Hennepin and Ramsey Counties, and all those acting under them, omit from the ballots to be used at the general election to be held on November 7, 1972, the names of Jerome Daly and Gordon C. Peterson as candidates for the office of justice of the supreme court and the names of Charles Thibodeau and William E. Drexler as candidates for the office of judge of district court.

It is further ordered that inasmuch as these filings were improperly accepted, the filing fees of each of the individuals affected should be returned to them.

Associate Justices C. Donald Peterson and Fallon Kelly took no part in the consideration or decision of this case. Substituting for them were Associate Justice William P. Murphy, retired, and Judge Robert Bakke, sitting pursuant to appointment of the court.

Appendix B

STATE OF MINNESOTA
IN THE SUPREME COURT

In the Matter of the Candidacy of Jerome Daly and Gordon C. Peterson for Associate Justice of the Supreme Court, and the Candidacy of William E. Drexler and Charles Thibodeau for Judge of District Court.

Order to Show Cause

43867

On reading the attached affidavits of Arlen I. Erdahl, Lou McKenna, George B. Hickey John C. McCarthy and Curtis D. Forslund, due showing having been made that an error may be about to be made by the placing on the ballots for the general election to be held in the State of Minnesota on November 7, 1972, the names of Jerome Daly and Gordon C. Peterson as candidates for Associate Justice of the Supreme Court and the names of William E. Drexler and Charles Thibodeau as candidates for Judge of District Court.

IT IS HEREBY ORDERED that Arlen I. Erdahl Secretary of State, Lou McKenna, Ramsey County Auditor, and George B. Hickey, Hennepin County Auditor, appear in this court before the undersigned, on the 22nd day of August, 1972 at 9:30 o'clock a.m., and show cause why an order should not be issued commanding them and all persons acting under them to refrain from placing the names of Jerome Daly, Gordon C. Peterson, William (Bill) Drexler and Charles Thibodeau on the ballots for the general election to be held November 7, 1972, as candidates for the aforesaid offices.

Let this Order be served upon the said Arlen I. Erdahl, Lou McKenna and George Hickey, and served upon, left at or mailed to the last known addresses of the said Jerome Daly, Gordon C. Peterson, William E. Drexler, and Charles Thibodeau, in order that they may appear and be heard.

Dated: July 25, 1972. /s/ Oskar K. Knutson

Chief Justice,
Supreme Court

STATE OF MINNESOTA
IN THE SUPREME COURT

In the Matter of the Candidacy of Jerome Daly and Gordon C. Peterson for Associate Justice of the Supreme Court, and the Candidacy of William E. Drexler and Charles Thibodeau for Judge of District Court.

AFFIDAVIT OF ARLEN I. ERDAHL

Arlen I. Erdahl, being first duly sworn on oath deposes and says as follows:

1. That he is a citizen of the State of Minnesota, duly registered and qualified to vote for candidates for the following judicial offices in the State of Minnesota at the next general election to be held on November 7, 1972:

a. Associate Justice of the Supreme Court to which Fallon Kelly was appointed.

b. Associate Justice of the Supreme Court to which C. Donald Peterson was elected for the regular term.

2. That he is presently, and at all times material herein has been, the duly elected Secretary of State for the State of Minnesota.

3. That he makes this Affidavit pursuant to Minn. Stat. 203.38 (1971) because he believes that an error has been or is about to be committed in the preparation of the ballots for the general election to be held in the State of Minnesota on November 7, 1972, as more fully set forth below.

4. That on July 14, 1972, there was presented to him, through his duly authorized representative, at his office in St. Paul, Minnesota, an affidavit of candidacy signed by Jerome Daly for the office of Associate Justice of the Supreme Court to which C. Donald Peterson was elected for the regular term, together with the filing fee prescribed by law. The affidavit declares said Jerome Daly to be "learned in the law" and appears to be complete on its face and to meet the statutory requirements to place the name of Jerome Daly on the primary and general election ballots for said judicial office. A copy of said affidavit is attached hereto and marked as Exhibit A.

5. That on July 14, 1972, there was presented to him through his duly authorized representative, at his office in St. Paul, Minn., an affidavit of candidacy signed by Gordon C. Peterson for the office of Associate Justice of the Supreme Court to which Fallon Kelly was appointed, together with the filing fee prescribed by law. The affidavit declares Gordon C. Peterson to be "learned in the law" and appears to be complete on its face and to meet with statutory requirements to place the name of Gordon C. Peterson on the primary and general election ballots for said judicial office. A copy of said affidavit is attached hereto and marked as Exhibit B.

6. That, on information and belief, on July 14, 1972, there was presented to the

Honorable Lou McKenna, Ramsey County Auditor, or his duly authorized representative, at his office in St. Paul, Minnesota, an affidavit of candidacy signed by William E. Drexler for the office of Judge of the District Court of the Second Judicial District to which Sidney P. Abramson was appointed, together with the filing fee prescribed by law. The affidavit declares said William E. Drexler to be "learned in the law" and appears to be complete on its face and to meet with statutory requirements to place said William E. Drexler's name on the primary and general election ballots for said judicial office.

7. That, on information and belief, on July 18, 1972, there was presented to the Honorable George B. Hickey, Hennepin County Auditor, or his duly authorized representative, at his office in Minneapolis, Minnesota, an affidavit of candidacy signed by Charles Thibodeau for the office of Judge of the District Court of the Fourth Judicial District to which A. Paul Lommen was appointed, together with the filing fee prescribed by law. The affidavit declares said Charles Thibodeau to be "learned in the law" and appears to be complete on its face and to meet with statutory requirements to place the name of Charles Thibodeau on the primary and general election ballots for said judicial office.

8. That, on information and belief, said Charles Thibodeau has never been admitted to the practice of law in this State, and said Jerome Daly, Gordon C. Peterson and William E. Drexler have been disbarred from the practice of law in this State.

9. That he is aware that Article VI, 7 of the Minnesota Constitution requires judges of the Supreme Court and the District Court to be "learned in the law;" that this qualification has been held to require candidates for such offices to be attorneys at law, and thus admitted to the practice of law in this State by the Supreme Court of Minnesota.

10. That he believes it would be an error for the Secretary of State or the County Auditors mentioned herein to have the names of Jerome Daly, Gordon C. Peterson, William E. Drexler, and Charles Thibodeau placed on the 1972 general election ballots as candidates for the judicial offices for which they have filed.

11. That he seeks by this Affidavit a judicial determination of the right of the above-mentioned individuals to be on said ballots because the County Auditors mentioned above and he are charged with the responsibility of preparing said ballots.

12. That only two candidates have filed with the office of the Secretary of State for each of the Supreme Court positions referred to above; and that, on information and belief, only two candidates have filed foe each of the District Court positions referred to above. That because only two candidates have filed for each judicial position herein, their names will not appear on the primary ballot pursuant to Minn. Stat. 202.03, subd. 3 (1971); that the approximate printing deadline for the 1972 general election ballot is October 4, 1972.

13. That the relevant Election Calender for 1972 is as follows:

July 18, 1972	Last filing day
July 24, 1972	Last day to withdraw from primary
July 25, 1972	Approximate printing deadline for primary ballot
Aug, 11, 1972	Last day for Secretary of State to certify names to county auditors for primary election ballots
Sept. 12, 1972	State Primary Election
Sept. 26, 1972	Certification of names of primary winners
October 3, 1972	Last day to withdraw from General Elections

October 4, 1972	Approximate printing deadline for State White Ballots
October 4, 1972	Approximate printing deadline for County and District or "Canary" ballots
October 10, 1972	Filing and posting deadline for State Ballot
October 23, 1972	Deadline for delivery of State Ballot to County Auditors
October 29, 1972	Filing and posting deadline for Canary Ballots
November 7, 1972	General Election

Further affiant sayeth not.

Dated: July 25, 1972. /s/ Arlen I. Erdahl
ARLEN I. ERDAHL

STATE OF MINNESOTA
IN THE SUPREME COURT

In the Matter of the Candidacy of Jerome Daly and Gordon C. Peterson for Associate Justice of the Supreme Court, and the Candidacy of William E. Drexler and Charles Thibodeau for Judge of District Court.

AFFIDAVIT OF LOU McKENNA

Lou McKenna, being first duly sworn on oath deposes and says as follows:

1. That he is the County Auditor of Ramsey County, Minnesota.

2. That he is a citizen of the State of Minnesota, duly registered and qualified to vote for candidates fir the following judicial offices in the State of Minnesota at the next general election to be held on November 7, 1972:

a. Associate Justice of the Supreme Court to which Fallon Kelly was appointed.

b. Associate Justice of the Supreme Court to which C. Donald Peterson was elected for the regular term.

c. Judge of the District Court of the Second Judicial District to which Sidney P. Abramson was appointed.

3. That he makes this Affidavit pursuant to Minn. Stat. 203.38 (1971) because he believes that an error has been or is about to be committed in the preparation of the ballots for the general election to be held in the State of Minnesota on November 7, 1972, as more fully set forth below.

4. That on July 14, 1972, there was presented to him, or his duly authorized representative, at his office in St. Paul, Minnesota, an affidavit of Candidacy signed by William E. Dre xler for the office of Judge of the District Court of the Second Judicial District to which Sidney P. Abramson was appointed, together with the filing fee prescribed by law. Said affidavit requests that William E. Drexler's name appear on the ballot as William (Bill) Drexler. The affidavit appears to be complete on its face and to meet with statutory requirements to place the name of William (Bill) Drexler on the primary and general election ballots for said judicial office. A copy of said affidavit is attached hereto and marked as Exhibit C.

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5. That he is aware that Article VI, 7 of the Minnesota Constitution requires judges of the District Court to be "learned in the law;" that he believes this qualification requires candidates for such offices to be attorneys at law and admitted to the practice of law in this State by the Supreme Court of Minnesota.

6. That, on information and belief, said William E. Drexler has been disbarred from the practice of law in this State.

7. That he believes it would be an error for the Ramsey County Auditor to have the name of William (Bill) Drexler placed on the 1972 general election ballot as a candidate for the judicial office for which he has filed.

8. That by this affidavit he seeks a judicial determination of the right of said William E. Drexler to be on said 1972 general election ballot because he is charged with the responsibility of preparing said ballot.

9. That candidates for the judicial office here referred to will appear on the County and District or "Canary" ballot pursuant to Minn. Stat. 203.29 (1971); that because only two persons have filed for said office said two candidates will not be on primary ballot pursuant to Minn. Stat. 202.03, subd.3 (1971).

Further affiant sayeth not.

Dated: July 25, 1972. /s/ Lou McKenna

LOU McKENNA

STATE OF MINNESOTA
IN THE SUPREME COURT

In the Matter of the Candidacy of Jerome Daly and Gordon C. Peterson for Associate Justice of the Supreme Court, and the Candidacy of William E. Drexler and Charles Thibodeau for Judge of District Court.

AFFIDAVIT OF GEORGE B. HICKEY

George B. Hickey, being first duly sworn on oath deposes and says as follows:

1. That he is the County Auditor of Hennepin County, Minnesota.

2. That he is a citizen of the State of Minnesota, duly registered and qualified to vote for candidates for the following judicial offices in the State of Minnesota at the next general election to be held on November 7, 1972:

a. Associate Justice of the Supreme Court to which Fallon Kelly was appointed.

b. Associate Justice of the Supreme Court to which C. Donald Peterson was elected for the regular term.

c. Judge of the District Court of the Fourth Judicial District to which A. Paul Lommen was appointed.

3. That he makes this Affidavit pursuant to Minn. Stat. 203.38 (1971) because he believes that an error has been or is about to be committed in the preparation of the ballots for the general election to be held in the State of Minnesota on November 7, 1972, as more fully set forth below.

4. That on July 18, 1972, there was presented to him, or his duly authorized representative, at his office in Minneapolis,

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Minnesota, an affidavit of candidacy signed by Charles Thibodeau, for the office of Judge of the District Court of the Fourth Judicial District to which A. Paul Lommen was appointed, together with the filing fee prescribed by law. The affidavit declares said Charles Thibodeau to be "learned in the law" and appears to be complete on its face and to meet with statutory requirements to place the name of Charles Thibodeau on the primary and general election ballots for said judicial office. A copy of said affidavit is attached hereto and marked as Exhibit D.

5. That he is aware that Article VI, 7 of the Minnesota Constitution requires judges of the District Court to be "learned in the law"; that he believes this qualification requires candidates for such offices to be attorneys at law and admitted to the practice of law in this State by the Supreme Court of Minnesota.

6. That on information and belief, said Charles Thibodeau has never been admitted to the practice of law in this State.

7. That he believes it would be an error for the Hennepin County Auditor to have the name of Charles Thibodeau placed on the 1972 general election ballot as a candidate for the judicial office for which he has filed.

8. That by this Affidavit he seeks a judicial determination of the right of said Charles Thibodeau to be on said 1972 general election ballot because he is charged with the responsibility of preparing said ballot.

9. That candidates for the judicial office referred to will appear on the county and District or "Canary" Ballot, pursuant to Minn. Stat. 203.29 (1971); that because only two persons have filed for said office said two candidates will not be

on the primary ballot pursuant to Minn. Stat. 202.03, subd. 3 (1971).

Further affiant sayeth not.

Dated: July 24, 1972.

/s/ George B. Hickey

GEORGE B. HICKEY

STATE OF MINNESOTA
IN THE SUPREME COURT

In the Matter of the Candidacy of Jerome Daly and Gordon C. Peterson for Associate Justice of the Supreme Court, and the Candidacy of William E. Drexler and Charles Thibodeau for Judge of District Court.

AFFIDAVIT OF CURTIS D. FORSLUND

Affiant, being first duly sworn on oath deposes and says as follows:

1. That he is Solicitor General of the State of Minnesota and he makes this affidavit to show that it would be error to prepare or print ballots for the general election to be held in the State of Minnesota on November 7, 1972, bearing the names of Jerome Daly or Gordon C. Peterson as candidates for Associate Justice of the Supreme Court, or the names of William E. Drexler or Charles Thibodeau as candidates for Judge of District Court.

2. That he makes this affidavit pursuant to Minnesota Statutes 203.38, subd. 1 (1971).

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3. That he is informed that said persons have filed Affidavits of Candidacy for such offices with the Secretary of State, the Hennepin County Auditor, or the Ramsey County Auditor, declaring themselves to be "learned in the law."

4. That he is aware that Article VI, 7 of the Minnesota Constitution requires judges of the Supreme Court and the District Court to be "learned in the law;" that this qualification has been held to require candidates for such offices to be attorneys at law, and thus admitted to the practice of law in this State by the Supreme Court of Minnesota.

5. That, on information and belief, said Charles Thibodeau has never been admitted to the practice of law in this State, and the said Jerome Daly, Gordon C. Peterson and William E. Drexler have been disbarred from the practice of law in this State.

Further affiant sayeth not.

Dated: July 25, 1972. /s/ Curtis D. Forslund

CURTIS D. FORSLUND

STATE OF MINNESOTA
IN THE SUPREME COURT

In the Matter of the Candidacy of Jerome Daly and Gordon C. Peterson for Associate Justice of the Supreme Court, and the Candidacy of William E. Drexler and Charles Thibodeau for Judge of District Court.

AFFIDAVIT OF JOHN C. McCARTHY

John C. McCarthy, being first duly sworn on oath deposes and says as follows:

1. That he is the Clerk of the Supreme Court of the State of Minnesota, and is custodian of the files and records of the Supreme Court of Minnesota.

2. That he has reviewed the files and records of this Court and knows them to show the following: that Jerome Daly, in the proceeding bearing File No. 42174 was disbarred on July 16, 1971; that Gordon C. Peterson, in the proceeding bearing File No. 37947 was disbarred on June 23, 1961; That William E. Drexler, in the proceeding bearing File No. 42153 was disbarred on June 18, 1971; that there is no record in this Court of the foregoing persons being readmitted to the practice of law in this State.

3. That after diligent search he has been unable to find any record of this Court showing that Charles Thibodeau has been admitted to the practice of law in this State.

Further affiant sayeth not.

Dated: July 25, 1972.

/s/ John C. McCarthy

JOHN C. McCARTHY

Appendix C

STATE OF MINNESOTA
IN THE SUPREME COURT

In the matter of the Candidacy of Jerome Daly and Gordon C. Peterson for Associate Justice of the Supreme Court, and the Candidacy of William E. Drexler and Charles Thibodeau for Judge of District Court.

43867
MOTION AND NOTICE OF MOTION

TO: Arlen I. Erdahl, Secretary of State, Lou McKenna, Ramsey County Auditor and George B. Hickey, Hennepin County Auditor:

YOU WILL PLEASE TAKE NOTICE, That the undersigned, appearing specially and not generally, and not admitting the jurisdiction of the above Court nor any of the Justices thereof, will move the Supreme Court of Minnesota on August 22, 1972 at the State Capitol to vacate the Order to Show Cause dated July 25, 1972 and to dismiss the above entitled proceedings upon the following grounds:

1. That Minnesota Statute MSA 203.38, upon which the above proceedings are based is unconstitutional and void and in violation of the 1st, 5th and 14th Amendments to the Constitution of the United States.

2. That the Court lacks jurisdiction over the persons, parties and subject matter.

3. That the Court has no jurisdiction because of a lack of a Plaintiff or Petitioner, Defendant or Respondent, Lack of a Judicial Tribunal and none provided for in the statute;that there is no petition nor prayer for relief: that there are no parties nor Attorneys upon whom service may be had: That in the event of an appeal there are no parties upon whom Notice of Appeal nor Bond may be served; that there is no trial according to some settled course of Judicial Proceedings provided for.

4. That said statute, MSA 203.38 is unconstitutional and void in that it does not provide for Notice and does not save the rights of the parties, nor does it provide for Noticeto all parties in interest.

5. That said statute, MSA 203.38 is unconstitutional and void in that it provides for no lawful means to invoke the jurisdiction of the Court.

6. That the Order to Show Cause is in violation of Minnesota Statutes and the Rules of Court in that it is not signed by the Clerk and does not contain the Seal of the Court, is not a lawful process and is a nullity.

7. That MSA 203.38 is unconstitutional and void because it provides for a denial of the privileges and immunities of citizens of the United States and a denial of the equal protection of the laws and life, liberty and property wi-

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thout due process of law in violation of the 14th Amendment of the U.S. Constitution.

8. That the Justices of the Supreme Court are disqualified and have no jurisdiction because of personal interest, bias and prejudice.

9. That the whole proceedings are an unconstitutional attempt to divest the electorate or the people of the State of Minnesota from excercising their inalienable rights to select Judicial Officers of their choice.

The said Motion is based upon The Declaration of Independence,The Northwest Ordinance of July 14,1787; The Constitution, Treaties and Laws of the United States and upon all the files, records and proceedings herein.

Jerome Daly
Box 1676
Twin City Airport,Minn.
55111

Gordon C. Peterson
1900 La Salle
Minneapolis, Minnesota

William E. Drexler
1002 Selby Ave.
St. Paul, Minnesota

Charles T. Thibodeau
3935 Upton Ave. So.
Minneapolis,Minnesota

August 7,1972

STATE OF MINNESOTA
IN THE SUPREME COURT

In the matter of the Candidacy of Jerome Daly and Gordon C. Peterson for Associate Justice of the Supreme Court, and the Candidacy of William E. Drexler and Charles Thibodeau for Judge of District Court.

MEMORANDUM ON BEHALF OF JEROME DALY, GORDON C. PETERSON, WILLIAM E. DREXLER AND CHARLES THIBODEAU

FACTS

Daly, Peterson, Drexler and Thibodeau have filed an objection to the above proceedings upon several grounds. These are set forth in the Motion which is anexed hereto.

A Court cannot acquire jurisdiction to make a determination on the rights of anyone without parties. This seems so fundimental as to not require the citation of any authority.

Contrary to the assertion found in the brief filed by the office of the Attorney General this is not a mandamus proceeding nor was it brought under the statutes providing the procedure for the issusance of a Writ of Mandamus. This proceeding is a special proceeding brought pursuant to MSA 203.38.

However, MSA 203.38 is unconstitutional upon its face as it does not provide for a tribunal that the proceeding is brought before. The Statute provides that it be brought to a judge. There is a definite distinction between a judge and a court.

MSA203.38 does not provide for Parties, Notice, Hearing of Judgement. It is totally devoid of any procedural protection to insure due process of law.

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See 20 Am Jur 2d on Courts Sec. 94 which is as follows:

20 Am. Jur 2d, Courts

§ 94. Jurisdiction as dependent on application by party for relief.

The general rule is that a court cannot undertake to adjudicate a controversy on its own motion; it can do this only when the controversy is presented to it by a party,[1] and only if it is presented to it in the form of a proper pleading.[2] A court has no power either to investigate facts or to initiate proceedings.[3] Before it may act there must be some appropriate application invoking the judicial power of the court in respect to the matter sought to be litigated. Where a statute prescribes a mode of acquiring jurisdiction, that mode must be followed or the proceedings[4] and resulting judgment[5] will be null and void and the judgment subject to collateral attack.[6]

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[1] United States v. [illegible] 20 L Ed 2d 534, 88 S Ct 1477, 8 ALR 3d 1337 [illegible] in the particular case, there must be suit instituted in accordance with federal procedure); Swing v. St. Louis Refrigerator & [illegible] Ark. 246, 93 S.W. 978 (jurisdiction of a court may be called into action only by party in some mode prescribed by [illegible] Federal Savings Co. [illegible] La Salle [illegible] Ill. [illegible] N.E. [illegible] [illegible] Williams, 151 Ohio St. 296, 85 [illegible]

Where complaint was filed in federal district court [illegible] and clerk did not issue summons [illegible] Mass. 22 [illegible] ney [illegible] ing for payment of costs in accordance with state statute requiring undertaking in libel [illegible] failure to comply with subdivision (a) of this rule providing that on filing of complaint clerk shall forthwith issue summons and deliver it for service as required in all civil actions including actions for libel. Id

[2] Stock holders Pub. Co. v. A. Cal. Pac. Pub. Co., 21 Cal. 2d 281

In federal court, compliance with subdivision (a) of this rule providing that on filing of complaint clerk shall forthwith issue summons and deliver it for service as required in all civil actions including actions for libel. Id

Likewise, no process has been issued by the Supreme Court to any one nor has MSA 484.04 been complied with which is as follows:

" Every Writ or Process issuing from a Court or Record shall be tested in the name of the presiding Judge, be signed by the Clerk and Sealed with the Seal of the Court."

This was the rule at Common Law and is the rule in this State by Statute.

However, MSA 203.38 provides for no mode jurisdiction. See Gove vs. Murray County; 147 Minn. 24. This case holds that; " That law must itself must save the rights of the parties." The Statute in question there provided for no Notice.

Gove vs. Murray County is set forth in full as follows: See Appendex E.

See 16 Am Jur 2d Sec. 177 on Constitutional law;"Since an unconstitutional law is void the general principles follow that it imposes no duties, confers no rights, creates no office, bestows no power or authority on any one, affords no protection, and justifies no acts performed under it." See cases cited.

A court cannot amend an unconstitutional statute or give it effect by an Order to Show Cause. See article 3 of the Minnesota Constitution. No Court can exercise a legislative power under the Constitution of Minnesota.

See 16 Am Jur 2d Const. Law Sec. 560 on the subject of Notice on due process of law. "-----the statute itself must, to be constitutional specifically require Notice, since in the absence of such a requirement, it will be deemed to authorize proceedings without notice."

Not only does the Court not have jurisdiction by reason of a complete denial of due process of law, but the Court does not have jurisdiction over the particular question at all.

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In the first place the justices of the Supreme Court are disqualified by reason of self interest. The real party in interest here is the American Bar Association and the Minnesota State Bar Association. All of the Judges of the Supreme Court are members of these Associations and the monopoly of the practice of law.

See Article 6 Sec. 7 of the Minnesota Constitution.

Judges of the Supreme Court, the district court and the probate court shall be learned in the law. "This cannot be more than an admonition to the people at the polls where the question is to be decided. The Supreme Legislative Power; the supreme Executive Power and the supreme Judicial Power resides in the People. This is affirmed in Article One Section One of the Bill of Rights of the Minn. Const. "Government is instituted for the security, benefit and protection of the people, in whom all political power is inherent, together with the right to alter, modify or reform such government, whenever the public good may require it."

The 14th Amendment to the U.S. Const., provides: "All persons born or naturalized in the United States, and subject to the jurisdicition thereof, are citizens of the United States and of the State wherein they reside. No state shall enforce or make any law which shall abridge the privileges and immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws."

The qualification for public officials is set out in the Constitution of the United States. See Article 1, "No person shall be a Senator who shall have not attained the Age of thirty years." See Article II. "No person shall be eligible to the Office of President who shall not have attained the age of thirty five years."

See Article III of the Constitution of the United States. There is no qualification requirement to be a Justice on the Supreme Court of the United States nor are there any qualification requirements to be a Federal Judge in any State or a Judge on the Circuit Court of Appeals.

One of the privileges of the Citizen is to Petition the U.S.District Court in Minnesota for a redress of grievances. It is also an inesteemable privilege of the Citizen to have the right to appear before a Judge who is not disabled or who is laboring under no disability, such as a requirement of a license from any monopoly to qualify for office of public trust.

It ought to be further noted that there is no license requirement to hold the Office and practice law as the Attorney General of Minnesota or the County Attorney for any County.

To require that candidates for the Supreme Court be licensed lawyers or to hold that a member of the Supreme Court of Minnesota has to be a licensed lawyer is contrary to the requirement in the 14th Amendment that No State shall deny to any person within its jurisdiction the equal protection of the laws. See Sections 487, 488, 526 and 531 of 16 Am Jur 2d on Const. Law Equal protection of the Laws means that the rights of all persons must rest upon the same rule under the same circumstances. See 226 M. 186 Anderson vs. St.Paul. Article VI. provides "...judicial Officers both of the United States and of the several States, shall be bound by oath or Affirmation, to support this Constitution".

See 16 Am Jur on const. Law Sec. 488. "...all persons shall be treated alike under like circumstances and conditions.

Since no qualifications exist for Federal Judges sitting in this State the privileges and immunities clause and the equal protection of the laws clause prohibits a State form setting up any qualifications.

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Another consideration exists, under the present state of the record in this State, that wholly disables the Supreme Court of Minnesota from entering any Order or Judgment removing the names of Daly, Peterson, Drexler or Thibodeau from the ballot. Not only are the names properly on the ballot, but they cannot be removed without due process of law. Any removal at all does violence to the rights of the people to elect their representatives and officials.

The undersigned highly suspect that there is a desire to remove the names from the ballot because of so called ethical considerations.

This is a question that we are entitled to have a very careful consideration made of.

The Supreme Court has by Court Order enacted the Canons of Ethics of the American Bar Association. These Cannons of Ethics go far to set up a Religion by the State. They clearly control and interfer with the rights of conscience not only of the Lawyer but also of the parties who peaceably assemble before the Judicial branch of the Government and Petition for a redress of grievances. See Cannon 15 which directly interfers with the conscience and judgment of not only the lawyer but more s seriously the client. These cannons take control of the litigation and place it in the hands of the lawyer who is the agent. The lawyers conscience is controlling and his conscience is controlled by the licensing authority. Al most every Cannon interfers with freedom of contract, speech, press, association assembly and the right to Petition the judicial branch of the government for a redress of grievances. Cannon 41 makes a stool pigeon out of every lawyer. He must go around looking for fraud on the part of his client so that he can report it to the affected person or tribunal. This is an actual violation of the 4th, 5th and 9th Amendment rights of the citizens of this

State. This Cannon and the corresponding disciplinary rule permits and invites State and Federal authorities to undermine the historic independence of the Lawyer and destroys the confidential relationship. With these Cannons no person is secure in his house, papers, person or effects from an unlawful search and siezure and his ancient right that no man can be compelled to be a witness against himself in any criminal proceedings. The Cannons and the disciplinary rules literally rip the Bill of Rights to shreds.

Every State Constitution in the union contains a prohibition against the control of or interference with the rights of conscience.

See Article One Sec. 16 of the Minn. Const. "...nor shall any control of or interference with the rights of conscience be permitted."

See the definitions of Legal Ethics; Moral; Cannon; Conscience; Right of Conscience; Liberty of Conscience; Liberty; Life; Property; Sacred; which are annexed hereto.

Note: Minn. Const. Article 1, Sec. 17. "No Religious Test shall ever be required as a qualification for any office of public trust under this State."

Rights of Freedom of the press cannot be licensed. This right was wrestled from the English King at the time of our revolution.

There are certain inherent, inalienable and indefeasible rights which all men are born with.

These are rights which are secured to mankind by natural endowment.

The Ninth Amendment to the Constitution provides; "The enumeration of certain rights in the Constitution, shall not be construed to disparage or deny others retained by the people."

Article 6 provides "All Engagements entered into, before the adoption of the Constitution shall be as valid against the United States under this Constituion, as under the Confederation."

One of the engagements entered into was the Declaration of Independence. It is annexed hereto and set out in full.

Other engagements were the Declaration of Resolves of the First Continental Congress of October 14, 1774. The Declaration of the Causes and Necessity of Taking Up Arms of July 14, 1775. The Treaty of Peace with Great Britan of 1783.

All of these documents reflect upon the unenumerated rights retained by the people.

The Declaration of Independence set up an absolute cut off from British Monarchy and all Clerical Rule and authority. The Declaration was the act of the whole people. Thereafter the States were formed and Constitutions were set up by the people agreeing amoung themselves to do so. The Declaration of independence, in its own language, in the first two paragraphs, absolutely secures the rights of liberty of conscience the same as if the people were then and there delivered upon this earth by God himself.

"No Humane authority can in any case whatever, control or interfere with the rights of conscience." So reads the Constitution of the Commonwealth of Pennsylvania. A similar provision is found in every State Constitution in the United States.

"The rights of conscience shall never be infringed"-- Utah.

"No law shall in any case whatever control the free exercise and enjoyment of Religious, opinions, or interfere with the rights of conscience."---Oregon.

"...nor shall any control of or interference with the rights of conscience be permitted." ---Minnesota.

The First Amendment to the Constitution of the United States provides that "Congress shall make no law respecting an establishment of Religion, or prohibiting the free exercise thereof."

This is binding upon the States by the 14th Amendment.

Not only can Congress make no law establishing a Religion, but it can make no law even RESPECTING the establishment of a Religion.

There can be no injunction against the right to freedom of conscience in advance. This is a fundamental right.

See Lemon vs. Kurtzman 91 S.Ct. 2105 at 2111. (1971) It is there quoted; "A given law might not ESTABLISH a State religion but nevertheless be one "respecting" that end in the sense of being a step that could lead to such establishment and hence offend the First Amendment. An injunction on the right of freedom of conscience in advance is a law respecting the establishment of Religion.

See United Transportation Union v. State Bar of Michigan 91 S. Ct. 1076 at 1081 (1971). There can be no injunction against the right to freedom of conscience or injunctions against "temptation", nor can potential temptation be the sufficient basis for the issuance of an injunction. As Justice Black stated for the majority "Indeed, it would appear that injunctions over "temptation" has heretofore been reserved to the churches".

Ministers of Religion cannot be licensed by the State. The rights of freedom of speech cannot be licensed. Freedom of Association cannot

be licensed. See Cannons of Ethics. "Lawyers are Ministers of the Law". Rights of freedom of conscience cannot be licensed. Neither can Lawyers be licensed by the State.

See also J.E. Heard vs. John Moore attached hereto in which the Supreme Court of Tenessee held that one need not be a licensed attorney to meet the statutory qualification for County Judge who is required to be "learned in the law". (See Appendex F).

The questions presented here are questions to be settled by the people at the ballot box. The right to hold public office has been held to be a fundamental right. See Turner v. Fouche, 396 U.S. 346, Where fundamental rights are involved, the state not the persons claiming infringment, has the burden of showing a compelling governmental interest in the classification adopted, and, absent such a showing, the state action is unconstitutional even if there is a reasonable basis for the classification, See Shapiro v. Thompson, 394 US 618.

The Courts of Minnesota and South Dakota have in the past apparently relief quite heavily upon Danforth v. Egan 119 NW 1021 There it is stated; "Knowledge of this branch of the law, commonly known as "legal ethics" has long been recognized as the most important qualification for one who is to be intrusted with the "sacred" duties of an Attorney at Law..."

If an Attorney at Law is exercising "sacred duties" then the legislature and the Courts of this state have set up a Religion and have interfered with the rights of conscience, as the word "sacred" is used to characterize religious things and duties.

Taking any step toward or respecting the establishment of a religion is outlawed by the 1st and 14th Amendments to the Constitution of the United States.

Mr. Justice Black made a statment in 1971 in the case of Bodie vs. Connecticut, 91S.Ct. 780 which is appropriate in this present proceeding. It is as follows:

> I do not believe the wise men who sought to draw a written constitution to protect the people from governmental harassment and oppression, who feared alike that king and the king's judges, would have used any such words or phrases. Such unbounded authority in any group of politically appointed or elected judges would unquestionably be sufficient to classify our nation as a Government of men, not a government of Law of which we boast. With a "shock of conscience" test of constitutionality, citizens must guess what is the law, guess what a majority of 9 judges will believe fair and reasonable. Such a test willfully throws away the certainty and security that lies in a written constitution, one that does not alter with a judges' help, belief or his politics. I believe the only way to steer this country towards it's great destiny is to follow what our Constitution says, not what judges think it should have said.

The people and their elected representative, not the judges, are constitutionally vested with the power to amend the Constitution. Judges should not usurp that power in order to put over their own views.

WE, the undersigned, respectfully petition that the Order to Show Cause be dismissed.

/s/ William E. Drexler
William E. Drexler

/s/ Gordon Peterson
Gordon Peterson

/s/ Jerome Daly
Jerome Daly

/s/ Charles T. Thibodeau
Charles T. Thibodeau

August 19, 1972.

IN THE MATTER OF JUDICIAL DITCH PROCEEDING NO. 4, MURRAY COUNTY, MINNESOTA.

C. W. GOVE v. COUNTY OF MURRAY.[1]

October 15, 1920.

No. 21,665.

Appealable order.

1. An order requiring a county to show cause why a bill against it should not be paid, being a final order affecting a substantial right made in the special proceeding, in view of G. S. § 8001, subd. 7, is appealable.

Judicial ditch — audit of claim against county — case followed.

2. The decision in State ex rel. County of Murray v. District Court of Thirteenth Judicial District, 138 Minn. 204, holding unconstitutional as not affording due process of law, that portion of section 5571, G. S. 1913, which provides that in judicial ditch proceedings claims against a county shall be audited and allowed by the district judge after dismissal of the proceedings, without providing notice to the county, is followed and adhered to.

Rights of parties determined by statute, not by order of court.

3. No vitality can be given to the statute and no effect given to proceedings under it by the issuance of an order to the county to show cause why the claim should not be paid. The law itself must save the rights of the parties.

After the former appeal reported in 138 Minn. 204, 164 N. W. 812, the county of Murray objected to the application of C. W. Gove for an order fixing a time and place for the audit and allowance of his claim for services as engineer, on the ground that the statute under which it was instituted was unconstitutional and that the court was without jurisdiction. The matter was heard by Callaghan, J., acting at the request and in the place of Nelson, J., who dismissed the order to show cause obtained by C. W. Gove. From the order of dismissal, C. W. Gove appealed. Affirmed.

[1]Reported in 179 N. W. 669.

E. H. Nicholas and *H. H. Dunn*, for appellant.
Murphy & Anderson and *W. A. Tierney*, for respondent.

HALLAM, J.

In Judicial Ditch Proceedings Number Four (4) of Murray county, appellant, C. W. Gove, was duly appointed engineer. On August 31, 1916, the ditch proceeding was dismissed. On April 10, 1917, appellant presented to the judge of the district court of Murray county a bill for his services and expenses as such engineer, and the judge, acting under G. S. 1913, § 5571, audited the bill and ordered it paid. This order was reviewed by this court on certiorari and was reversed. State ex rel. County of Murray v. District Court of Thirteenth Judicial District, 138 Minn. 204, 164 N. W. 815. On January 3, 1918, appellant procured an order returnable January 11, 1918, requiring the county to show cause why the bill should not be paid. On the return day the county objected to the proceeding, on the ground that the statute under which it was instituted was unconstitutional, and that the court was without jurisdiction.

Before the court ruled upon the objection, evidence was taken, subject to the objection. The court finally sustained the objection to the jurisdiction and dismissed the order to show cause. The claimant appealed.

1. In our opinion the order is appealable. It is a final order affecting a substantial right made in a special proceeding. G. S. 8001, subd. 7. It ended the proceeding and that constitutes finality. Rondeau v. Beaumette, 4 Minn. 163 (224).

Both parties and the court appear to have regarded the appearance of the county as a special appearance for the purpose of raising objection to the jurisdiction and in view of this fact we will so regard it.

2. When this case was before this court on the former appeal, it was held that the legislature intended that the counties should be primarily liable for the expenses incurred in judicial ditch proceedings when the proceeding is dismissed. The court declined to say "that the legislature might not impose liability upon the county for expenses where the ditch is not constructed," but the court did hold that the portion of section 5571, which in substance provides that, after the ditch proceeding is dismissed, such claims shall be audited, allowed and paid upon the

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order of the judge of the district court, is "unconstitutional as not due process of law," because the statute "provides for no notice to the county, no right or opportunity to be heard" on an application to the court to audit and allow such claims and order them paid. On motion for reargument, the court was asked to modify the opinion so that the statute shall not be held unconstitutional if notice is given to the county. "The motion to modify the opinion" was denied. The writer of this opinion did not concur in the view that this statute is unconstitutional, but the decision was the well-considered decision of the majority of the court and there seems no occasion to reopen that question. The decision was explicit that the portion of section 5571, under which this application is made, is unconstitutional as applied to parties in the relation of the parties of this appeal, that is, as applied to an application to the court after the ditch proceeding has been dismissed.

In Baugh v. County of Norman, 140 Minn. 465, 168 N. W. 348, it was held that, during the course of the ditch proceeding the court may, on application made on notice, order payment of the fees of the engineer and his assistant out of funds raised by assessment. Distinction was there drawn between such an application, made during the course of a pending proceeding, and this one, made after the proceeding has terminated and the parties are out of court.

3. In disposing of the motion to modify the opinion on the former appeal, the court said: "It may be understood that the question whether an order made under the statute would be valid if proper notice was given by order to show cause or otherwise of the application to the court is left open."[1] The question "left open" does not present any serious difficulty. The statute being unconstitutional, no vitality can be given to it, and no effect given to proceedings under it, by the issuance of an order to show cause. The constitutionality of a statute does not depend upon the acts of parties nor upon an order of a court. If the statute offends against the Federal constitutional requirement of due process of law, it is a nullity, and it cannot be mended by parties or courts. The law itself must save the rights of the parties. The notice that is required to satisfy the requirement of due process of law must be provided as an essential part of the statutory provision and not awarded as a mere matter of favor or grace. These propositions are well settled. Security

[1][138 Minn. 210]

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Trust & S. V. Co. v. Lexington, 203 U. S. 323, 27 Sup. Ct. 87, 51 L. ed. 201; Central of Georgia Ry. Co. v. Wright, 207 U. S. 127, 28 Sup. Ct. 47, 52 L. ed. 134, 12 Ann. Cas. 463; Louisville & N. R. Co. v. Central Stockyards Co. 212 U. S. 132, 29 Sup. Ct. 246, 53 L. ed. 441; Coe v. Armour Fertilizer Works, 237 U. S. 413, 35 Sup. Ct. 625, 59 L. ed. 1027. It follows that the court was right in holding that it acquired no jurisdiction and in dismissing the proceedings.

Order affirmed.

DIBELL, J. (dissenting.)

I am unable to concur in the view that State ex rel. County of Murray v. District Court of Thirteenth J. D. 138 Minn. 204, 164 N. W. 815, concludes us upon the question of the constitutionality for want of due process of the portion of G. S. 1913, § 5571, referred to in the opinion, and that the question whether compensation might be allowed the engineer upon proper notice to the county is foreclosed.

In the case cited, which involved the ditch proceeding here involved, the majority opinion held the statute unconstitutional for want of due process because it made no provision for notice. The order then under review was made ex parte. The order now under review was made upon notice. Justice Hallam dissented upon the question of constitutionality. His views were these:

"First, in judicial proceedings, the legislature can provide that jurisdiction once acquired shall continue for all purposes until the proceeding is finally terminated, and no notice except the first is jurisdictional, or an essential to due process of law."

"Second, where a statute provides for an interlocutory hearing or proceeding, but does not provide for notice, a requirement of notice is implied. * * * And, if notice is given, the proceeding is in all respects regular and the statute operative."

A motion for reargument was made. It followed the suggestion of Justice Hallam's dissent. Counsel acceded to the proposition that compensation could not be given except upon proper notice, and, apparently having in mind the situation now before us, asked a holding that there would be due process if proper notice were given. Such a holding would not have changed the result, for notice had not been given. In

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APPENDIX F

J. H. HEARD, County Judge,
v.
JOHN MOORE, Appt.

Tennessee Supreme Court — December 13, 1926.

(— Tenn. —, 290 S. W. 15.)

Judges, § 25 — learned in law — necessity of being attorney.

One need not be a licensed attorney to be within the statutory qualification for county judge who is required to be one "learned in the law," but the requirement is merely a direction to the voters, and the question is settled by a majority of the votes.

[*See annotation on this question beginning on page* 1156.]

APPENDIX G

203.38 Errors and omissions, remedy

Subdivision 1. When it shall appear by affidavit to any judge of the supreme court in the case of a state election, or of the district court of the proper county in the case of a county election:

(a) That an error or omission in the placing or printing of the name or description of any candidate on official primary or general election ballots has occurred or is about to occur; or

(b) That any other error in preparing or printing the ballots has occurred or is about to occur; or

(c) That any officer of a political party or political party committee has failed to properly make or file a certificate of nomination; or

(d) That any wrongful act, neglect, or error by any election judge, county auditor, canvassing board or member thereof, secretary of state, or other person charged with any duty concerning an election, has been or is about to be done,

then the judge immediately shall order the officer, person, or board charged with the error, wrong, neglect, or failure to correct the same or perform the duty forthwith or show why he should not do so. Failure to obey the order is contempt of court.

Subd. 2. If in conducting the canvass of votes at any election as provided by law the majority of the county canvassing board believes that an obvious error in the counting and recording of the vote for any particular office has been made by the judges in any precinct, then the county canvassing board shall forthwith notify the candidates for such particular office of their belief. They shall at the same time notify the candidates in writing what is the obvious error they believe has been made. Such candidates may without unreasonable delay apply to the district court of the county within which the precinct is located for an order determining whether or not an obvious error has been made. Such application shall set forth the facts and such evidence may be submitted as the court may direct. If the court finds that an obvious error appears to exist it shall specify the error and direct the board

to make an inspection of the ballots and the returns of the precinct for the purpose of correcting the obvious error and to further proceed in accordance with section 204.30 or as it may otherwise direct.

If any candidate believes that an obvious error in the counting and recording of the vote for any particular office has been made by the judges in any precinct, then such candidate may without unreasonable delay apply to the district court of the county within which the precinct is located for an order determining whether or not an obvious error has been made. If such application is made by a candidate the procedures otherwise provided for in this subdivision shall be applicable.

Whenever a proceeding is commenced in the district court pursuant to the provisions of this subdivision the county canvassing board and all candidates for the office affected shall be given notice thereof as the court may direct.

Subd. 3. (1) When all the candidates for a particular office concur in writing that an obvious error in the counting or recording of the vote for such office has been made by the judges in any precinct then the county canvassing board shall correct the obvious error as concurred in by the candidates.

(2) When all of the candidates for a particular office concur in writing that an obvious error in the counting and recording of the vote for such office has been made by the county canvassing board they shall jointly notify the county auditor thereof who shall reconvene the county canvassing board. The county canvassing board shall forthwith correct such obvious error as concurred in by the candidates and file an amended report in connection therewith with the county auditor. The county auditor shall forthwith certify the amended result to the secretary of state. When an obvious error is corrected in conformity with this paragraph the county canvassing board and the county auditor shall also perform such other duties in connection therewith in order to conform with the requirements of Minnesota Statutes, Section 204.29.

(3) When all of the candidates for a particular office concur in writing that an obvious error in the counting and recording of the vote for such office has been made by the state canvassing board, they shall jointly notify the secretary of state, and if a certificate of election has not been issued, he shall reconvene the state canvassing board. The state canvassing board shall forthwith correct such obvious error as concurred in by the candidates and file an amended statement and certification in connection therewith. When an obvious error is corrected in conformity with this paragraph the state canvassing board and the secretary of state shall also perform such other duties in connection therewith to conform with the requirements of Minnesota Statutes, Section 204.31.

Amended by Laws 1965, c. 81, § 1, Laws 1969, c. 85, § 1, eff. March 28, 1969

APPENDIX- H

CONSCIENCE, RIGHT OF. As used in some constitutional provisions, this phrase is equivalent to religious liberty or freedom of conscience. Com. v. Lesher, 17 Serg. & R. (Pa.) 155. State v. Cummings, 36 Mo. 263.

RELIGIOUS FREEDOM. Within constitution embraces not only the right to worship God according to the dictates of one's conscience, but also the right to do, or forbear to do, any act, for conscience sake, the doing or forbearing of which is not inimical to the peace, good order, and morals of society. Barnette v. West Virginia State Board of Education, D.C.W.Va., 47 F.Supp. 251, 253, 254; Jones v. City of Moultrie, 196 Ga. 526, 27 S.E.2d 39.

LIFE. That state of animals and plants or of an organized being, in which its natural functions and motions are performed, or in which its organs are capable of performing their functions. Webster. The sum of the forces by which death is resisted. Bichat.

"Life" begins in contemplation of law as soon as an infant is able to stir in the mother's womb. State v. Forte, 222 N.C. 537, 23 S.E.2d 842, 843.

"Life" protected by the Federal Constitution includes all personal rights and their enjoyment embracing the use and enjoyment of the faculties, acquiring useful knowledge, the right to marry, establish a home, and bring up children, freedom of worship, conscience, contract, occupation, speech, assembly and press. Rosenblum v. Rosenblum, 62 N.Y.S.2d 626, 630, 181 Misc. 78.

FREEDOM. The state of being free; liberty; self-determination; absence of restraint; the opposite of slavery.

The power of acting, in the character of a moral personality, according to the dictates of the will, without other check, hindrance, or prohibition than such as may be imposed by just and necessary laws and the duties of social life.

The prevalence, in the government and constitution of a country, of such a system of laws and institutions as secure civil liberty to the individual citizen.

FREEDOM OF RELIGION. Embraces the concept of freedom to believe and freedom to act, the first of which is absolute, but the second of which remains subject to regulation for protection of society. Oney v. Oklahoma City, C.C.A.Okl., 120 F. 2d 861, 865.

LIBERTY. Freedom; exemption from extraneous control.

Freedom from all restraints except such as are justly imposed by law. Ex parte Kreutzer, 187 Wis. 463, 204 N.W. 585, 604. Freedom from restraint, under conditions essential to the equal enjoyment of the same right by others; free-

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dom regulated by law. Kelly v. James, 37 S.D. 272, 157 N.W. 990, 991. The absence of arbitrary restraint not immunity from reasonable regulations and prohibitions imposed in the interests of the community. Southern Utilities Co. v. City of Palatka, 86 Fla. 583, 99 So. 236, 240; Nelsen v. Tilley, 137 Neb. 327, 289 N.W. 388, 392, 126 A.L.R. 729; Arnold v. Board of Barber Examiners, 45 N.M. 57, 109 P.2d 779, 785.

The power of the will to follow the dictates of its unrestricted choice, and to direct the external acts of the individual without restraint, coercion, or control from other persons. See Booth v. Illinois, 22 S.Ct. 425, 184 U.S. 425, 46 L.Ed. 623; Munn v. Illinois, 94 U.S. 142, 24 L.Ed. 77; People v. Warden of City Prison, 51 N.E. 1006, 157 N.Y. 116, 43 L.R.A. 264, 68 Am.St.Rep. 763.

The word "liberty" includes and comprehends all personal rights and their enjoyment. Rosenblum v. Rosenblum, 42 N.Y.S.2d 626, 630, 181 Misc. 78. It embraces freedom from duress, In re Miner, D.C.Ill., 9 F.Supp. 1, 7; freedom from governmental interference in exercise of intellect, in formation of opinions, in the expression of them, and in action or inaction dictated by judgment, Zavilla v. Masse, 112 Colo. 183, 147 P.2d 823, 827; freedom from servitude, imprisonment or restraint, Committee for Industrial Organization v. Hague, D.C.N.J., 25 F.Supp. 127, 131, 141; People v. Wood, 272 N.Y.S. 258, 151 Misc. 66; freedom in enjoyment and use of all of one's powers, faculties and property, Grosjean v. American Press Co., La., 56 S.Ct. 444, 297 U.S. 233, 80 L.Ed. 660; City of Mt. Vernon v. Julian, 369 Ill. 447, 17 N.E.2d 52, 55, 119 A.L.R. 747; freedom of assembly, Rosenblum v. Rosenblum, 42 N.Y.S.2d 626, 630, 181 Misc. 78; freedom of citizen from banishment, Committee for Industrial Organization v. Hague, D.C.N.J., 25 F.Supp. 127, 141; freedom of conscience, Gobitis v. Minersville School Dist., D.C.Pa., 21 F.Supp. 581, 584, 587; freedom of contract, State ex rel. Hamby v. Cummings, 166 Tenn. 460, 63 S.W.2d 515; State v. Henry, 37 N.M. 536, 25 P.2d 204, 90 A.L.R. 805; freedom of locomotion or movement, Commonwealth v. Doe, 109 Pa.Super. 187, 167 A. 241, 242; Committee for Industrial Organization v. Hague, D.C.N.J., 25 F.Supp. 127, 131, 141; freedom of occupation, Koos v. Saunders, 349 Ill. 442, 182 N.E. 415, 418; freedom of press, Commonwealth v. Nichols, 301 Mass. 584, 18 N.E.2d 166, 167; Near v. State of Minnesota ex rel. Olson (Minn.) 51 S.Ct. 625, 628, 283 U.S. 697, 75 L.Ed. 1357; freedom of religion, Gabrielli v. Knickerbocker, 12 Cal.2d 85, 82 P.2d 391, 393; Hamilton v. City of Montrose, 109 Colo. 228, 124 P.2d 757, 759; Cantwell v. State of Connecticut, Conn., 60 S.Ct. 900, 903, 310 U.S. 296, 84 L.Ed. 1213, 128 A.L.R. 1352; freedom of speech, Ghadiali v. Delaware State Medical Soc., D.C.Del., 28 F.Supp. 841, 844; Carpenters and Joiners Union of America, Local No. 213, v. Ritter's Cafe, Tex., 62 S.Ct. 807, 809, 315 U.S. 722, 86 L.Ed. 1143. It also embraces right of self-defense against unlawful violence, Rohrer v. Milk Control Board, 121 Pa.Super. 281, 184 A. 133, 136; right to acquire and enjoy property, Rohrer v. Milk Control Board, 121 Pa.Super. 281, 184 A. 133, 136; right to acquire useful knowledge, Rosenblum v. Rosenblum, 42 N.Y.S.2d 626, 630, 181 Misc. 78; right to carry on business, Mile. Reif, Inc., v. Randau, 1 N.Y.S.2d 515, 518, 166 Misc. 247; right to earn livelihood in any lawful calling, Saidel v. Village of Tupper Lake, 4 N.Y.S.2d 814, 818, 254 App.Div. 22; right to emigrate, and if a citizen, to return, Committee for Industrial Organization v. Hague, D.C.N.J., 25 F.Supp. 127, 141; right to engage in a lawful business, to determine the price of one's labor, and to fix the hours when one's place of business shall be kept open, State Board of Barber Examiners v. Cloud, 220 Ind. 552, 44 N.E.2d 972, 980; right to enjoy to the fullest extent the privileges and immunities given or assured by law to people living within the country, McGrew v. Industrial Commission, 96 Utah 203, 85 P.2d 608, 611; right to forswear allegiance and expatriate oneself, Committee for Industrial Organization v. Hague, D.C.N.J., 25 F.Supp. 127, 141; right to freely buy and sell as others may, Rohrer v. Milk Control Board, 121 Pa.Super. 281, 184 A. 133, 136; right to labor, Simon v. Schwachman, 301 Mass. 573, 18 N.E.2d 1, 3; right to live and work where one will, People v. Wood, 272 N.Y.S. 258, 151 Misc. 66; right to marry and have a family, Committee for Industrial Organization v. Hague, D.C.N.J., 25 F.Supp. 127, 141; Rosenblum v. Rosenblum, 42 N.Y.S.2d 626, 630, 181 Misc. 78; right to pursue chosen calling, State v. Chisesi, 187 La. 675, 175 So. 453; People v. Cohen, 8 N.Y.S.2d 70, 72, 255 App.Div. 485; right to use property according owner's

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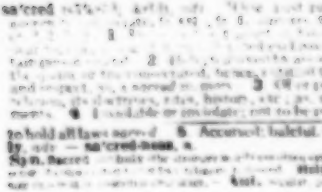

Civil Liberty

The liberty of a member of society, being a man's natural liberty, so far restrained by human laws (and no further) as is necessary and expedient for the general advantage of the public. 1 Bl. Comm. 125; 2 Steph. 487

The power of doing whatever the laws permit. 1 Bl. Comm. 6; Inst. 1, 3, 1. See Dennis v. Moses, 18 Wash. 537, 52 P. 333, 40 L.R.A. 302. The greatest amount of absolute liberty which can, in the nature of things, be equally possessed by every citizen in a state. Guarantied protection against interference with the interests and rights held dear and important by large classes of civilized men, or by all the members of a state, together with an effectual share in the making and administration of the laws, as the best apparatus to secure that protection. Lieber, Civ.Lib. 24.

CANON.

A Dignitary of the English Church

A dignitary of the English church, next after a bishop, or member of a cathedral chapter. The members of chapters except deans are in the strictest sense, in England. 2 Steph. Comm. 719 et seq., n.; 1 Bl. Comm. 382.

A Law, Rule, etc.

A law, rule or ordinance in particular, and the church in particular. An especially [illegible] A rule of doctrine or discipline [illegible] established by the constituted authorities and decrees of popes.

A System or Aggregation of Correlated Rules

A system or aggregation of [illegible] whether of statutory origin or otherwise, relating to and governing a particular department of legal science or a particular branch of the substantive law.

Canon law. A body of ecclesiastical jurisprudence. In England, accordingly, Blackstone says, there is a kind of [illegible] 1 Bl. Comm. 82. The canon law is contained in two principal parts, the decrees of councils and constitutions made by the popes and cardinals, and

MORAL. Pertaining to ... intention, social relations ... States v. Carrollo, D.C. Mo., 30 F. ...

2. Pertaining or relating to ... one or more ... or to the general ...

2. Capable of or endowed with ... by the principles of right ... to being violated from positive law.

3. Depending upon or resulting from probability; relying on the belief of conviction in the mind independent of strict or moral proof.

A ... moral ...

MORAL ACTIONS. Those only in which men have knowledge to guide them and a will to choose for themselves. Bish. Mor. Law, b. 1, c. 1.

MORAL ETHICS. ... of the moral principles ... and duties; that branch of ... which treats of the duties which a ... owes to the public. It has professional brethren, and ... Brandeau v. La Vie, 46 La. Ann. ... 15 So. Rep. ...

MORAL FRAUD. This phrase is one of the less usual designations of "actual" or "positive" fraud or "fraud in fact," as distinguished from "constructive" fraud or "fraud in law." It means fraud which involves actual guilt, a wrongful purpose, or moral obliquity.

MORAL HAZARD. See Hazard.

MORAL INSANITY. See Insanity.

MORAL LAW. The law of conscience; the aggregate of those rules and principles of ethics which relate to right and wrong conduct and prescribe the standards to which the actions of men should conform in their dealings with each other. Moore v. Strickling, 46 W.Va. 515, 33 S.E. 274, 50 L.R.A. 279.

MORAL OBLIGATION. [illegible]

MORAL TURPITUDE. [illegible]

CONSCIENCE. The moral sense; the ability of applying the moral qualities of [illegible] distinguishing between right and wrong [illegible] is applied to one's perception and [illegible] the moral qualities of his own conduct; [illegible] value sense, forming a [illegible] standards of morality to the [illegible] sense of right and wrong [illegible] by virtue of his existence [illegible] endowed with being a [illegible] Ireland v. Wright, 296 Mo. 414, 256 S.W. [illegible] In law, especially the moral [illegible] private and honest dealing [illegible] and man, as when we say [illegible] "against conscience" or "unconscionable," or that the price paid for property [illegible] so inadequate as to "shock the conscience." [illegible] is also the meaning of the term as [illegible] jurisdiction and principles [illegible] of chancery as in saying that such a court is a "court of conscience," that it proceeds "according to conscience," or that it has [illegible] letters of conscience." See 3 Blackstone, 57 et. People v. Stewart, 7 Cal. 143; Miller v. Miller, 187 Pa. 572, 41 A. 277.

As an element of equitable jurisdiction it is not the private opinion of an individual court, but is rather to be regarded as a metaphorical term denominating the common standard of right and propriety ever based upon general principles and applied by enlightened courts to which the court appeals and by a series of texts, the conduct and rights of suitors. National City Bank of New York v. Gilfert, 284 N.Y. 19, 29 N.E. 2d 449, 452.

Liberty of Speech

Freedom accorded by the constitution or laws of a state to express opinions and facts by word of mouth, uncontrolled by any censorship or restrictions of government.

But language tending to the violation of the rights of personal security and private property, and toward breaches of the public peace, is an abuse of the right. State v. Boyd, 86 N.J.L. 75, 91 A. 546, 547; which is not license nor lawlessness, but rather the right to fairly criticize and comment. State v. Pape, 30 Conn. 98, 36 A. 313, 315. Liberty never has meant the unrestricted right to say what one pleases at all times and under all circumstances. Pirtle v. U. S., C.C.A.N.Y., 250 F. 28, 35. It is not an absolute right. State v. Chaplinsky, 91 N.H. 310, 19 A.2d 754, 760. It has been thought that the liberty to speak includes the corresponding right to be silent, and that this right is infringed by a statute compelling a corporation to give a discharged employee a statement of the cause of discharge. St. Louis Southwestern Ry. Co. of Texas v. Griffin, 106 Tex. 477, 171 S.W. 703, 705, L.R.A.1915F, 1100. As used in Constitution, "freedom of speech" means freedom of speech as it was understood by the common law when the Constitution was adopted. State v. Boloff, 138 Or. 388, 7 P.2d 775, 781.

FINAL CONCLUSION

Please refer to the opinion of the Supreme Court of Minnesota on page 18 herein. There the Minnesota Supreme Court stated: "Knowledge of this branch of the law, commonly known as legal ethics, has long been recognized as the most important qualification of ONE WHO IS TO BE ENTRUSTED WITH THE SACRED DUTIES OF AN ATTORNEY AT

Also please see the Canons of Ethics and the Disciplinary Rules of the American Bar Association which have been adopted by Order of the Supreme Court of Minnesota.

CANON 41 is as follows:

Canon 41. Discovery of Imposition and Deception

When a Lawyer discovers that some fraud or deception has been practiced, which has unjustly imposed upon the court or a party, he should

endeavor to rectify it; at first by advising his client, and if his client refuses to forego the advantage thus unjustly gained, he should promptly inform the injured person or his counsel, so that they may take appropriate steps.

Also by Order of Court the Minnesota Supreme Court has adopted the following:

SPECIAL COMMITTEE ON
EVALUATION OF ETHICAL STANDARDS

Code of Professional Responsibility

AMERICAN BAR ASSOCIATION

Final Draft
July 1, 1969

The Disciplinary Rules, unlike the Ethical Considerations, are mandatory in character. The Disciplinary Rules state the minimum level of conduct below which no lawyer can fall without being subject to disciplinary action. Within the framework of fair trial,[8] the Disciplinary Rules should be uniformly applied to all lawyers,[9] regardless of the nature of their professional activities.[10] The Code makes no attempt to prescribe either disciplinary procedures or penalties[11] for violation of a Disciplinary Rule,[12] nor does it undertake to define standards for civil liability of lawyers for professional conduct. The severity of judgment against one found guilty of violating a Disciplinary Rule should be determined by the character of the offense and the attendant circumstances.[13] An enforcing agency, in applying the Disciplinary Rules, may find interpretive guidance in the basic principles embodied in the Canons and in the objectives reflected in the Ethical Considerations.

DISCIPLINARY RULES

DR 7-101 Representing a Client Zealously.

(B) A lawyer who receives information clearly establishing that:

(1) His client has, in the course of the representation, perpetrated a fraud upon a person or tribunal shall promptly call upon his client to rectify the same, and if his client refuses or is unable to do so, he shall reveal the fraud to the affected person or tribunal."[1]

(2) A person other than his client has perpetrated a fraud upon a tribunal shall promptly reveal the fraud to the tribunal."[2]

It should also be noted that William E. Drexler was disbarred on June 18, 1971 by the Minnesota Supreme Court for an alleged violation of DR 7-101 (B). He was Justice of The Peace in St. Paul at the time of his disbarrment. In spite of the disbarrment William Drexler was elected again to the office of Justice of the Peace, in the face of stiff oposition, by an over whelming majority of the people in St. Paul. This is the only way that they can defeat William E. Drexler. Keep his name off of the ballot.

It goes without saying that if a Lawyer is entrusted with sacred duties by the Supe Supreme Court then they have established a Religion.

If the Supreme Court can enact or legislate Cannons of Ethics by Court Order that not only control the conscience of the Licensed Lawyer but that actually interfer with the rights of conscience of people who peaceably assemble and Petition the Judicial branch of the gov. for redress of grievances then they have set themselves up as a group of self-appointed, self-anointed, High-Priests. They make Canon Law the same as the

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High Priests of the old Brahama Religion and the Pope. If a Lawyer does not conform he is disbarred and kicked out of their church. Not only that, he dare not even speak to or admise any other citizen while in their church, formerly known as the Courts of Minnesota.

This Monopoly controls the Courts and also the right to Petition.

The Judicial Branch of the Government in the State of Minnesota is not a branch of the Government for the people, of the People and by the People; on the contrary, it is government for the Licensed Lawyers, by Licensed Lawyers and of Licensed Lawyers just as it was under King George III.

It is respectfully submitted that the Order of the Supreme Court of Minnesota removing Petitioners from the Ballot be reversed.

PETITIONERS

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